

Section 58 of Children Act 2004 Review (Consultation)

Consultation Response Form

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August 2007

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Please Specify:

1 To what extent has section 58 improved legal protection for children in cases of alleged assault by their parents?

Please explain your answer in detail and provide evidence for your view

General remarks

The NSPCC runs more than 180 services in England, Wales and Northern Ireland, including ChildLine, which joined the NSPCC in February 2006. We are also represented on two-thirds of Local Safeguarding Children Boards (LSCBs). We work with children, young people and adults to protect children from abuse and neglect, to help children overcome the effects of their abuse and to provide them with someone to whom they can turn for help, advice and support. We also work to influence law and social policy so that children are more effectively protected, and their rights fulfilled. We are thus well placed to judge the “practical effects” of section 58, and our submission to this review is informed by the expertise and experience of our staff.

The NSPCC has made a strong commitment to this issue over the last 15 years delivering public education campaigns and campaigning for legal reform to give children equal protection under the law on assault. We are a founder-member of the Children are Unbeatable! Alliance and contribute to the Global Initiative to End Corporal Punishment of Children. We consider that to tackle the violence that some children experience the law must be unequivocal in the protection it affords and give them equal protection, which must be accompanied by widespread public education about positive parenting. Both these measures are needed; neither, alone, is sufficient to achieve cultural and behavioural change.

We consider it to be a national disgrace that year on year, as other more enlightened and sympathetic countries give children full protection under the law on assault, the UK fails to do so. Every time another country reforms the law, this disgrace grows ever greater.

Our concerns centre on two key issues: child protection and children’s rights. The NSPCC’s study of the prevalence of child abuse and neglect in the UKⁱ found that while the majority of parents used lighter forms of physical punishment and then stop using it, a significant number do not. There are hundreds of thousands of children who are growing up in families where they are smacked regularly and heavily, and the culture of violence in these families needs to be tackled as a priority.

Comments:

We do not consider that section 58 (s58) has improved legal protection for children. On the contrary, the government's affirmation of parental use of physical punishment during debates on the Children Bill in 2004,ⁱⁱ and in the legislative compromise introduced subsequently in the form of s58, has confirmed for parents that they have a legal and justifiable right to hit their children. In 2004 the government failed to give children the full legal protection from assault that all adults enjoy, and this has left them at risk of harm, as an example from one of our service teams clearly illustrates:

A girl was referred for post-abuse therapy after being sexually abused by her uncle. In this meeting, the girl said that she was frightened because her Dad had told her "I can still hit you without leaving a mark". We regarded this as a potential disclosure of further abuse and so, with her permission, the NSPCC worker spoke to her Dad about it. His response was to withdraw her from therapy, clearly because he was afraid of what she might say about him. We referred the case to the local Children's Services, but they are unable to intervene because the alleged actions (i.e. hitting without leaving a mark) are perfectly legal and so do not reach the threshold either of assault or of significant harm.

As a result, this girl, who has already suffered sexual abuse, has been denied access to any therapeutic help, and may be at risk of physical abuse but cannot be given help because the law doesn't give her equal protection against assault. We are continuing to seek to provide the help she needs, but this is actively hampered by this stark "practical effect" of section 58.

Data from a recently published Crown Prosecution Service (CPS) report on the use of the reasonable chastisement defence reports on a small number of cases where the defence has been used. However, this is of limited value to this review for two reasons. First, the number of cases reviewed is not statistically significant. Secondly, the report commentary states that "the research project did not seek to compare nor draw any conclusions about the number of cases where the reasonable chastisement defence has been put forward before and after the enactment of section 58 *Children Act 2004*. The project also does not seek to make any reference or comment on the effectiveness of section 58 *Children Act 2004*."ⁱⁱⁱ Further, it appears that the CPS did not have sufficient time to undertake a completely thorough review of the 12 cases they identified, as "unfortunately five cases were unable to be submitted in time for the review due to the tight timeframe allowed for the project".^{iv}

However, the report does provide evidence that the law is confusing, and improperly understood, even within the justice system: in four of the cases that

went through the courts reasonable chastisement was put forward as a defence to the charge of child cruelty, for which it is in reality no longer available. In addition, the CPS is not confident that two of the common assault cases were charged correctly, which has led them to recommend that prosecutors need to be reminded of the changes brought about by s58 and the revisions to the Charging Standard. This is more than two and a half years since s58 came into effect and reinforces our impression that the law is confusing and that children's safety is accorded low priority. This evidence would seem to contradict the assertion of Margaret Hodge, then Minister for Children, who outlined the aims of s58 (then clause 56) of the Children Bill on November 2, 2004, stating:

Clause 56 provides additional protection for children and tightens the existing law. Some of the cases in which there was a misuse of the reasonable chastisement defence would no longer be able to use that as a legal defence^v

2 To what extent have the changes brought about by section 58 altered the practice of those working with children and families in considering incidents involving an alleged assault by a parent upon a child?

Please explain your answer in detail and provide evidence for your view.

It is not possible to assess this from published evidence because the government does not accord the monitoring of violence against children the same priority as monitoring violence against adults. There is no routine monitoring of children's experience of physical violence comparable to the British Crime Survey data (for over-16s), and it is not possible to interrogate national data to discover the number of prosecutions for common assault and battery where the victim is younger than 18 because this is not available. As the former Home Office Minister Tony McNulty MP noted in January this year:

From the court proceedings database it is not possible to identify the number of prosecutions for common assault and battery where victims were under 18 years of age.^{vi}

Had the government been serious in its intent to review fully the impact of s58, it would have put in place effective mechanisms to do so. This has not been done. As a result, it is difficult to assess whether and if so how practice has been altered, with the exception of the CPS report we cite above (see Q1).

However, it is our strong impression, gained from our membership of LSCBs and our practice experience, that the new law has had no discernible effect on how cases are responded to. It is also evident from the case we cite above in

Q1 that it has acted to reduce the power of local authorities to protect children effectively.

Children continue to be hit and hurt by their parents and carers *invisibly* and *with impunity* and the government has no consistent mechanism for monitoring:
a) how often and how hard children are hit by their parents and
b) what, if anything, is done about this.

We provide our own ChildLine evidence of children's self-reported experience of physical assault below.

3 To what extent have the changes to the law deterred parents from using unacceptable levels of physical punishment in the upbringing of children?

Please explain your answer in detail and provide evidence for your view.

In our experience, it has not deterred parents in any way. Before the law was changed, the parent whose child was at no risk of abuse felt there was no law at all, whereas the situation now is that it feels as though the government has said it is acceptable; it has in effect reassured parents that they can hit their children.

The law also perpetuates a dangerous notion that there is a clear distinction between hitting and injuring a child, despite the fact that the majority of physical punishment occurs when parents are stressed and/or angry and not fully in control of what they do. The fact that certain forms of punishment are acceptable undermines the government's Every Child Matters emphasis on the need for more early intervention and prevention work with children and families.

In the words of one of our Family Support service managers:

"Parents are no more deterred or frightened or even worried about it [the situation] being different. ... Initially they will say 'You can tell us about anything, but not smacking. There's no law that says we can't smack our children at home'."

The NSPCC itself is clear that it is not permissible for parents who use our services to use physical punishment when they are on our service premises. This frequently leads to them re-think their use of physical punishment: *"In week one they think they have control and power, but by the second week they have power, but they are changing their minds [about physical punishment]."* It is a good example of how effective it can be to state clearly that parents cannot smack and then work with them to find alternatives.

However, the law has put in place a threshold for responding to parental use of physical punishment, namely that if it does not leave a mark it is all right. In our experience the threshold for children and families receiving services under Section 17 [of the Children Act 1989] is so high that local authorities are not picking up on abuse when it looks like punishment, so our preventative services are coming across more children needing help. One child alleged that their step-parent had repeatedly kicked him on many occasions between his knee and ankle. He was referred by us to Children's Services, but they would not do anything themselves because there were no bruises. Instead, the NSPCC provided a service to help him.

The testimony of children and young people

Physical punishment has been sanitised through language that minimises the reality of what is done to children, denying children's true experience of hitting, which they do not describe as 'gentle taps' or 'loving smacks'. Rather, they describe a smack as "a very hard hit" or "a big hit that makes you cry". Even more graphically, they have said:

"It feels like someone's banged you with a hammer" (five-year-old girl).

*"It feels like someone's punched you or kicked you or something"
(six-year-old boy).^{vii}*

The accompanying emotional effects of such treatment are not easily captured by definitions of physical punishment. Neither is it not possible to measure emotional pain in the way that you can measure how long a red mark on the skin lasts, but this does not make it any less real, and no less important. As one five-year-old boy comments:

"It makes you feel sick inside and it breaks your heart".^{viii}

In a recent online survey carried out for the DfES (now the DCSF), one in 10 children said they had been hit or harmed by an adult in the past 12 months and of these 87 per cent said this had happened in their home. Nearly a third of 16 and 17 year-olds (32 per cent) said they had been hit or harmed by an adult in the past year; one in five of under-12s (19 per cent) said they had been hit or harmed by an adult in the past year; and 12 per cent of 12 to 15 year-olds said they had been hit or harmed by an adult in the past year.^{ix}

Data from ChildLine

Physical assault data from ChildLine for the last few years demonstrate that children remain at as much risk in the home of physical assault by their parents as before the law was modified. Physical assault is the third most common reason for children calling ChildLine.

In 2006-7, ChildLine counselled 14,561 children about physical assault. Eighty-eight per cent of these children had been assaulted by a family member (33% by mothers, 29% by fathers and 11% by both parents). Sufficient data was supplied by 5,262 of the children to record that of these callers, 52% mentioned being hit with an object, 24% experienced "wounding" and 45% being bruised.

In 2004-05, ChildLine counselled 12,513 children about physical assault. In 34% of cases mothers were cited as the perpetrator, in 29% of cases it was the father and in 11% of cases it was both parents. In addition, 5,433 children called to talk about other issues, such as domestic violence, but also mentioned physical assault, giving a total of 17,956 children who called about physical assault.^x This is an average of more than two children per hour, every hour of the year, and does not of course include children who do not call ChildLine, and may be too afraid or too young to do so.

More than one in three (4,470 or 36%) of the children said they had been hit with an implement, bruised or wounded,¹ and the majority of children who called ChildLine about physical assault reported that it was ongoing, rather than a one-off event. For example, 16-year-old Trevor² called to ask what he could do about the abuse he was suffering, and his call clearly shows the escalation of his parents' use of physical force from slapping to severe assault:

"My parents have been beating me since I was eight. It used to be just slaps, but now Dad will knock me down and kick me in the ribs."^{xi}

In 2003-04 ChildLine counselled 15,150 children about physical assault, 5,285 of whom mentioned 51% being hit with an object, 24% experienced wounding and 47% being bruised.

In 2002-03 ChildLine counselled 13,650 about physical assault, 5,836 of whom 40% mentioned being hit with an object, 18% experienced wounding and 42% being bruised.

As mentioned above, it is also important to consider not only the physical impact of physical force but also its emotional impact, which is not necessarily visible, but is a very definite effect. In the words of one of our ChildLine Managers:

"Children's response to being hit is always profoundly negative. It always seems to call into question the relationship between the child and the person who hit them. Children are confused and angry, and feel bad about themselves".

¹ Note: This is only the percentage of cases where callers mentioned they had been hurt in these ways – the actual percentage could be higher.

² This name has been changed.

4 To what extent have the changes to the law stimulated local agencies to help parents in knowing how to establish effective boundaries for their children?

Please provide evidence for your view.

Our experience is that some, though not all, local authorities realise the need to put parenting on their agenda, but this has resulted from other drivers, such as parenting and family support strategies and the Every Child Matters programme, and has not been linked to s58. Further, social care agencies have always produced literature about positive discipline, and the law has not really added to this.

Indeed, far from assisting professionals in helping parents to establish effective boundaries for their children, the evidence suggests that the new law has had either no impact, or has had the opposite effect. For example, 82 per cent of parenting practitioners working in Sure Start projects and Children's Centres consider that s58 hinders their work with children and families – 20 per cent say that it hinders this work "a lot". Only one per cent said that it helps them.^{xii} Seventy-seven per cent of the sample said that "banning smacking" would help them achieve their professional aims.

Essentially, the law fails to give professionals working with children and families a clear mandate for promoting positive parenting and for being clear that physical punishment can be harmful and is ineffective for achieving lasting discipline. A good example of this is a case reported to us by one of our Children's Services Managers:

A Local Authority family centre worker has worked on developing positive parenting techniques with a couple whose children were at risk, and she advised them not to use physical punishment. The family then threatened to sue the family centre because they had been told not to use physical punishment when the law says that they can smack their children. This has not gone to court, but the Local Authority is now ensuring that all staff advise the families they work with that the law does allow them to smack their children, which clearly works against their efforts to help parents find more respectful, positive ways of parenting their children – something that *is* supported by the government.

5 In your experience have the changes to the law assisted those working with children and families to protect children and support parents?

Please explain in detail and provide evidence for your view.

The law does not seem to us to have encouraged professionals to behave in a way that sees children as having a right to be protected. Indeed, we know of cases where it has actively impeded the effective protection of children. We refer to the example provided above (Q1, p5), and also to the following:

One of our schools teams reported a case of a child being kicked in the stomach by his father; there was no external, visible bruising but it is highly likely there was extensive internal bruising. The incident was reported to Children's Services, and the child was sent for a medical examination, but this found no marking. Social Care spoke to the father, but the case did not go to case conference. We do not consider that this child has been sufficiently protected.

Section 58 makes professionals' jobs very difficult. If children are not marked, it is hard to take action to protect them. The complexity of child protection has thus increased, and children do not have the full protection of the law because it is unclear.

Were the law to be changed to make it clear that parents can use no form of physical punishment, then practitioners would be supported in working with families at a very early stage to help them find other ways of disciplining their children.

6 To what extent is the legal position on the physical punishment of children widely understood by those working with children and families?

Please explain your answer in detail and provide evidence for your view.

We do not consider the legal position to be widely understood at the operational level of Social Care, although it is probably better understood by people responsible for policy, namely LSCBs and Managers. This is largely because it is almost impossible to understand, because it leaves too much to subjective interpretation of what is 'reasonable'. Our impression is that it has not affected practice very much, and professionals are working more or less as they were before.

7 If your answer to question 6 above was that the legal position was not widely understood, please tell us what would be your preferred way of improving this situation?

It is neither right, nor safe, to define acceptable ways to hit anyone, let alone children, who are the most vulnerable in our society.

The current law is unprincipled and unjust, and we do not consider that it would be fitting or appropriate for the government to issue guidance or develop training programmes to clarify how parents and carers can hit their children legally. There would be outrage if this were proposed to enable spouses to hit their partners, or adults to hit their elderly dependent parents, and it should not be produced to enable parents to hit their children.

Instead, the government should have the courage to introduce legislation to give children equal protection under the law on assault. Rather than spending public money on promoting legislation that allows children to be hit, the government should change the law and spend the money on explaining the benefits of giving children equal protection, of introducing a law that would fulfil the UK's human rights obligations to children (see Q9 below) and bring about an important cultural shift in the way that children are regarded and treated.

This law would then send a clear unambiguous message that children are human beings deserving of the same right to human dignity and physical integrity as any other group in the population. This is what the Swedish government did in 1979, and the German government in 2000; 16 other have also given children full equal protection, and most of them are in Europe. There is evidence to show that it has the effect of making parents think again about how they could and should treat their children. (See also our response to Q9, below).

Concerns about parents being prosecuted for minor forms of physical chastisement could be allayed by making clear that the *de minimis* principle would be likely to apply, as it does to minor assaults between adults. This means in effect that "the law does not concern itself with small matters".

Further, it could be made clear that parents would only be prosecuted if it was in the public interest and the evidential test was satisfied. The law could further be amended to state any prosecution would also need to be in the child's best interests. (See also our response to Q9, below).

8 Have the changes to the law had a differential effect on different groups of children and parents, including on the grounds of gender, race and disability, and if so, to what extent?

Please explain your answer in detail and provide evidence for your view.

In our experience, the law has served to reinforce parents' legal right to hit children, and the effect of this is that children, alone of any group in society, can be hit. This differentiates them from all other population groups and makes them uniquely more vulnerable to abuse. It breaches children's Article 2 (non-discrimination) and Article 3 (best interests) rights under the UN Convention on the Rights of the Child, as well as Article 19 (freedom from abuse), compliance with which requires the removal of the parental defence of reasonable punishment (see response to Q9, below).

Children are also protected differentially in different settings. The Government has banned physical punishment in all schools, nurseries and other institutions, in daycare including childminding and in foster-care (except private foster-care), yet it allows parents to use this form of punishment. This makes no sense, and leaves children vulnerable in the place where they are the most invisible, behind the closed doors of their home.

The law means that professionals have a reduced mandate to involve themselves with cases of physical punishment, and parents have increased confidence to use it to discipline their children. It is unlikely that this was the government's intention when it introduced the law, seeking as it did a compromise to provide greater protection for children without leading to prosecutions of parents for "trivial smacks", but nonetheless this has been its effect.

Our view, however, is that not only is the law unjust in failing to give children full protection, it is unworkable, because there will always be differential interpretations of what constitutes 'reasonable' punishment. The defence is, ultimately, based on the premise that it is possible to hit a human being in a 'reasonable' manner. In all other spheres of policy, the government has rightly taken the stance that no violence is acceptable. This is the one exception to this 'zero tolerance' stance, and represents in itself a differentiated approach to violence, containing an inherent message that children do not deserve the same respect for their human rights and physical integrity as adults. This ignores both the physical and emotional impact of being hit, and sends a message to children that it is acceptable to use physical force to assert authority and control over another human being.

Inherent in the practical effects of s58 are different levels of protection for different children, which were highlighted in the House of Commons by David Hinchliffe MP and recorded in Hansard, when proposing full equal protection for children. He talked about his discussions with Chief Constable Terence Grange, who speaks for the Association of Chief Police Officers (ACPO) on child protection matters, saying:

“Subsequently, [Terence Grange] wrote to me, setting out the association's views on the serious problems that would arise for the police should clause 56 become law. ... He stated:

‘The proposed Clause would introduce randomness in terms of the child's physiology and the background of the parent, working class families tend to have much rougher hands than lawyers, bankers, etc. Some children redden or bruise much more easily than others. Such randomness and the use of age to differentiate between common assault and actual bodily harm is, in my view, likely to lead to much more complexity’.”^{xiii}

The NSPCC considers that disabled children, who are more than three times more likely to be abused^{xiv}, are potentially at greater risk from s58 because marks that are the result of physical punishment can be excused as being linked to their condition, for example it can be claimed they got caught in their wheelchair, or that they banged their head while headbanging. It is also especially challenging to communicate the nuances of the law to children with special needs and/or communication difficulties.

Black and minority ethnic children are also afforded less protection by the law, as it takes more force to leave a mark on a black skin than a white one. For example, there is unlikely to be visible reddening of the skin, which is mentioned in the Charging Standard. An assault does not become apparent unless it is hard enough to cause bruising. The law also discriminates against Muslim children who cover up their bodies. In Bradford, for example, we are aware that children are covering themselves at an ever younger age, so that girls are wearing the veil and headscarf from the age of eight. It is only possible to see their face and hands; any injury around their hairline, or on their neck, shoulders, back, or the tops of their legs would not be visible.

In this regard the law can be argued to be discriminatory in giving less protection to children with darker skins than children with lighter skins and to those whose religion requires them to cover most of their bodies when in public.

9 What are the key pieces of evidence that should be considered as part of this Review? Please provide details and/or links if appropriate.

There are a number of key pieces of evidence that the government should consider if it is serious about examining the practical effects of section 58:

1. The UK's obligations to fulfil the human rights instruments to which it is a signatory and which require that the government remove all forms of defence for hitting children.
2. Children's views and experiences
3. The link between physical punishment and physical abuse, and the nature of physical force – the maxim that “You don't know your own strength”
4. The experience of other countries.

1. The UK's human rights obligations

The UN Committee on the Rights of the Child, monitoring the UK's compliance with the Convention on the Rights of the Child, has twice recommended equal protection to the UK, in 1995 and 2002. In its 2002 report on the UK, the Committee stated: “...governmental proposals to limit rather than to remove the ‘reasonable chastisement’ defence do not comply with the principles and provisions of the Convention..., particularly since they constitute a serious violation of the dignity of the child.”

In September 2004, Parliament's Joint Committee on Human Rights concluded in its nineteenth report that: “We do not think that the very clearly expressed views of the Committee on the Rights of the Child can be ignored. As the only body charged with monitoring compliance with the obligations undertaken by States in the CRC, its interpretations of the nature and extent of those obligations are authoritative. In our view, the Committee has consistently made clear that corporal punishment of children is a serious violation of the child's right to dignity and physical integrity, and that states must both introduce a legislative prohibition of such punishment at the same time as measures for educating the public about the negative consequences of corporal punishment. In the light of this, we do not consider that there is any room for discretion as to the means of implementing Article 19 CRC as interpreted by the Committee on the Rights of the Child: it requires the reasonable chastisement defence to be abolished altogether.”^{xv}

In July 2006, the UN Committee on the Rights of the Child reminded all States which have accepted the Convention on the Rights of the Child, including the UK, that equal protection for children is an “an immediate and unqualified obligation”. The Committee continued: “...the Convention [on the Rights of the Child] requires the removal of any provisions (in statute or common – case – law) which allow some degree of violence against children (eg ‘reasonable’ or

'moderate' chastisement or correction), in their homes/families or in any other setting." (Committee on the Rights of the Child General Comment No. 8 provides detailed guidance on eliminating corporal punishment. For full text see: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.GC.8.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.GC.8.En?OpenDocument))

The October 2006 report of the United Nations Secretary-General's Global Study on Violence Against Children called on all countries to prohibit all physical punishment by 2009.

In July 2005, the European Committee of Social Rights, monitoring conformity with the European Social Charter, found UK law in breach of human rights obligations. It concluded: "...since there is no prohibition in legislation of all corporal punishment in the home, the situation [in the UK] is not in conformity with Article 17 of the Charter."

In their January 2006 joint statement, the UK's four Children's Commissioners called for urgent action, declaring "there is no room for compromise" on equal protection from assault for children.

2. Children's views and experiences

It is extraordinary that the government, in conducting this review, has chosen not to consult with children themselves, who are arguably best able to judge the effects of s58. Fortunately, work has been undertaken by other organisations to consult children on physical punishment, though not on the impact of s58 *per se*, and there is powerful data from ChildLine to demonstrate that children continue to be unsafe in their homes and subject to physical force used by their parents/carers, which we have cited above in response to Q3. Children's perspectives and experience are of major relevance to the review, and should have strong prominence in the decisions that are made with regard to its effects.

We therefore append a separate report that brings together pieces of work produced by children and young people working with the NSPCC and the Children's Rights Alliance for England (CRAE), which was done as a contribution to the United Nations Secretary General's Global Study on Violence Against Children.^{xvi} It includes:

- i) Poetry and statements which were written when the children and young people involved were provided with a blank template and asked to express their views on any type of violence. These children chose to express their views and feelings on the issues relating to physical punishment.
- ii) A series of quotations from children and young people who completed a questionnaire for the UN Study on Violence Against Children. The collection powerfully expresses children and young people's views on the issue of

physical punishment, and includes the following comment from a boy in Year 6:

"I think that violence against children is a terrible thing and no-one should be allowed to do it. I know that parents think hitting their children is a good way of making children do the right thing, but it makes children think of their parents as a scary person, not a loving person. Parents take their anger and stress out on their children and should learn to stop".

3. Physical punishment, physical abuse and the nature of physical force

In the NSPCC's experience, every case of physical abuse we have worked with began as an attempt to discipline a child, with the parent hitting harder and harder to achieve the same effect, and doing so in part because they believe it is their right to do so, which, to an extent, is supported by the law. The government has frequently made statements to the effect that parents know the difference between a "light slap" and abuse, but this is a hugely simplistic statement that ignores the child's right to respect and physical integrity, the context in which physical punishment is used, its emotional effect, and the greater strength and power of a grown adult used against a vulnerable and dependent child.

In addition to the powerful human rights arguments for giving children full equal protection under the law on assault, there is now compelling neuroscientific evidence that explains and supports the old maxim "you don't know your own strength" which the government should take into account in its review. Researchers from the Institute of Psychiatry and University College London, funded by the Wellcome Trust, proved in 2003 that "physical force escalates dramatically in a tit-for-tat situation". This is explained by one of the researchers as follows:

"Just before you make a movement you send a signal to a specific brain region to warn it what to expect ... The altered activity in this particular sensory area means that you tend to apply more force than you think. This mechanism also explains why you cannot tickle yourself - the brain already knows what sensation to expect and alters the brain activity responsible for the sensation accordingly. But when someone else tickles you there is no chance to adjust your brain perception, and you feel the full effects."

The researchers pointed out that this lack of accuracy in assessing the strength of directly applied force may have implications for contact sports like boxing, where the force you are applying will actually be greater than you think. Similarly, **"it may not be possible for parents to accurately judge the force they apply when they smack their children, and this experiment would suggest that they will smack harder than they think or intend"** [NSPCC's emphasis].^{xvii}

It can be dangerous to hit a child – just as it can be dangerous to hit anyone else - because it always carries a physical risk, is always emotionally hurtful and always has the potential to escalate into increased violence towards children, as adults hit harder and harder to achieve the same result. This is something that many, though by no means all, parents are aware of, as the following example from our forthcoming booklet 'The law smacks of injustice' (appended to this submission) shows:

Paula started to worry that smacking was the wrong course to take when she found herself having to hit her children harder for it to have an effect. "I have smacked my children in the past," said the mother of Sally, Milo and Ben (aged seven, nine and 10). "To be honest it didn't work – they just ignored me more and I had to smack them harder which started to really worry me. At what point does smacking become abuse?"^{xviii}

4. Evidence from other countries

There is strong evidence from countries such as Sweden and Germany, where equal protection for children was introduced in 1979 and 2000 respectively, that changing the law can bring about important changes in the way that parents discipline their children, and also change their attitudes to physical punishment. Parental interviews carried out in 1980 and 2000 in Sweden indicate that physical punishment has decreased significantly, particularly the use of implements, fists and spanking. Only 8.3 per cent of parents in 2000 stated having used any form of physical punishment in the last year, compared with 51.3 per cent in 1980.^{xix} A questionnaire completed by 1,800 school children revealed that 86 per cent had never experienced physical punishment.^{xx}

Reform in Germany is much more recent, and data on the amount of physical punishment used by parents is not available. However, research on the impact of reform on attitudes has reported some encouraging findings. Professor Bussman, who carried out the research, posits that the law performs a useful symbolic function, by 'shifting horizons or the reference points of ... perceptions'. Parents who were aware of the new law had an increased consciousness of what the law says about physical punishment were more likely to define physical punishment as violence, and more likely to refer to the new law in family communication. Professor Bussman has described the potential of legal reform as follows:

"The guiding idea is that the introduction of legal judgments cannot, in the end, prevent abusive attacks from parents, but [they] can help to make the justification of violence in child-rearing more difficult. Even the possibility of being in the wrong can endanger the normative consensus within families ... the refusal to speak about such limits or name such prohibitions demands justification".^{xxi}

Conclusion

The NSPCC urges the government to remove the defence of reasonable punishment, and give children equal protection under the law on assault. There is no other just and safe way to remedy the current situation. Seeking to issue guidance to clarify precisely how children can be hit is repugnant on moral grounds and fantastical on rational grounds, as it is not possible to define the subjective concept of 'reasonableness' in an objective way.

In its campaigning on this issue, the NSPCC has had the support of almost 30,000 individual parents who have written to the government urging it to give children equal protection under the law on assault. Since 2002 they have undertaken over 45,000 campaign actions. We consider this to provide a strong indication of the potential support that the government has from parents for changing the law. It should not be afraid to do so.

We are aware of concerns that this might lead to parents being prosecuted for minor assaults; in response to this, we cite Lord Condon's speech made when supporting full equal protection for children in the House of Lords in 2004:

I am absolutely certain that the status quo should not prevail and that your Lordships have an historic opportunity to establish a pragmatic, symbolic and new legal approach to protecting children.

Those noble Lords who are moving towards supporting Amendment No. 106 [i.e. full equal protection for children] should not be deterred by a fear of unleashing hundreds of thousands of police inquiries into trivial allegations and pitting child against parent in frivolous circumstances. The Association of Chief Police Officers and the Association of Directors of Social Services have acknowledged that they can envisage a sensible and pragmatic regime with clear guidelines being established. Noble Lords will clearly respond to their own consciences on this issue, but they should not be deterred from supporting Amendment No. 106 for fear of hundreds of thousands of unnecessary, frivolous investigations.^{xxii}

We strongly encourage the government to be courageous on behalf of children and to use the opportunity presented by this review to establish the "pragmatic, symbolic and new legal approach to protecting children" advocated by Lord Condon, which remains within their gift.

For further information please contact Lucy Thorpe, Policy Manager, email: lthorpe@nspcc.org.uk; tel: 020 7825 2537/7427 or Karen Keenan, email: karenkeenan@nspcc.org.uk; tel: 020 7825 2757.

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply X

Here at the Department for Education and Skills we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

X Yes	<input type="checkbox"/> No
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Thank you for taking time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 10 August 2007

Send by post to: Consultation Unit, Area 1A, Castle View House, East Lane, Runcorn, Cheshire WA7 2GJ

Send by e-mail to: section58.consultation@dfes.gsi.gov.uk

ⁱ Cawson, P., Wattam, C., Brooker, S. & Kelly, G. *Child maltreatment in the United Kingdom: a study of the prevalence of child abuse and neglect* (2000) London: NSPCC.

ⁱⁱ House of Commons Children Bill debate, November 2, 2004, Column 263.

ⁱⁱⁱ Crown Prosecution Service (July 2007) *Reasonable Chastisement research report*, available at: <http://www.cps.gov.uk/publications/research/chastisement.html>

^{iv} Ibid.

^v House of Commons Children Bill debate, November 2, 2004, Column 262.

^{vi} House of Commons Written Answer 23 Jan 2007: Column 1687W.

^{vii} Willow, C and Hyder, TS (1998) *It hurts you inside – Children talking about smacking*. London: Save the Children and National Children's Bureau.

^{viii} Ibid.

^{ix} Willow, C., Shaw, C. and Franklin, A. (April 2007) 'Meeting the obligations of the Convention on the Rights of the Child in England. Children and young people's messages to Government.' Department for Children, Schools and Families.

^x NSPCC (2006). ChildLine Casenote: *What children and young people tell ChildLine about Physical Abuse*, available at: <http://www.childline.org.uk/casenotes.asp>.

^{xi} Ibid.

^{xii} Children are Unbeatable! Alliance (July 2007) 'Physical punishment and the law: the view of parenting professionals'.

^{xiii} House of Commons Children Bill debate, November 2, 2004, Column 243.

^{xiv} Sullivan, P.M., Knutson, J.F., Scanlan, J.M. & Cork, P.M. (1997). Maltreatment of Children with Disabilities: Family Risk Factors and Prevention Implications. *Journal of Child Centred Practice*, 4 pp 33-46.

^{xv} Joint Committee on Human Rights Nineteenth Report (prepared September 21, 2004), available at: <http://www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/161/16107.htm>

^{xvi} 'Children and Young People's Voices on Physical Punishment'. Work collated by the NSPCC from submissions to the United Nations Secretary General's report on Violence Against Children (NSPCC and CRAE 2006).

^{xvii} 'You don't know your own strength': *Scientific basis for escalation of physical contact identified*. (July, 2003), available at: http://www.wellcome.ac.uk/doc_WTD002918.html

^{xviii} From draft of NSPCC booklet (*forthcoming*) 'The law smacks of injustice. It's time to change the law – parents' views'.

^{xix} Swedish Committee on Child Abuse and related Issues (2001). *Child Abuse – Prevention and Protection* (English translation: Summary), Chapter 4. Cited in Boyson, R. (2002) *Equal Protection for children: An overview of the experience of countries that accord children full legal protection from physical punishment*, London: NSPCC.

^{xx} Hindberg, Barbro (2001) *Ending Corporal Punishment*, Stockholm, Sweden: Ministries of Health and Social Affairs and Foreign Affairs, pp11. Cited in Boyson, R. (2002) *Equal Protection for children: An overview of the experience of countries that accord children full legal protection from physical punishment*, London: NSPCC.

^{xxi} Bussman, K. 'Evaluation of the German Prohibition of Family Violence Against Children'. Paper presented to the European Society of Criminology, September 5-7, 2002, Toledo, Spain. Cited in Boyson, R. (2002) *Equal Protection for children: An overview of the experience of countries that accord children full legal protection from physical punishment*, London: NSPCC.

^{xxii} House of Lords Children Bill 2004 debate, July 5, 2004, Column 549.